

1 MICHAEL C. SULLIVAN (SBN 131817)
Email: msullivan@paulplevin.com
2 MARTINA M. NAGLE (SBN 160983)
Email: tnagle@paulplevin.com
3 **PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP**
101 West Broadway, Ninth Floor
4 San Diego, California 92101-8285
Telephone: 619-237-5200
5 Facsimile: 619-615-0700

6
7 Attorneys for Defendants
Frontier Airlines, Inc., Republic Airways Holdings, Inc.,
8 Roger Sorenson

9
10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 KHAN MICHAEL ORDONEZ,

13 Plaintiff,

14 v.

15 FRONTIER AIRLINES, REPUBLIC
16 AIRWAYS HOLDINGS, ROGER
SORENSEN,

17 Defendants.

CASE NO. C 13-00940 MEJ

**DEFENDANT FRONTIER AIRLINES,
INC.'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT**

Mag. Judge:	Hon. Maria-Elena James
Removal Filed:	March 1, 2013
Trial Date:	Not Set

18
19 Defendant Frontier Airlines, Inc. ("Defendant"), for its Answer and Affirmative Defenses
20 to Plaintiff Khan Michael Ordonez's ("Plaintiff") Complaint, states as follows:

21 1. Defendant does not have knowledge or information sufficient to form a belief as to
22 the truth of the allegations in Paragraph 1, and on that basis denies such allegations.

23 2. Defendant admits that it employed Plaintiff at its San Francisco International
24 Airport location in San Mateo County from May 15, 2006 to September 3, 2010, and that
25 Defendant is a wholly-owned subsidiary of Defendant Republic Airways Holdings, Inc.
26 ("Republic"). Defendant denies all remaining allegations in Paragraph 2.

27 3. Defendant admits that it employed Plaintiff at its San Francisco International
28 Airport location in San Mateo County from May 15, 2006 to September 3, 2010, and that

1 Defendant is a wholly-owned subsidiary of Defendant Republic Airways Holdings, Inc.
 2 (“Republic”). Defendant does not have knowledge or information sufficient to form a belief as to
 3 the truth of the remaining allegations in Paragraph 3, and on that basis denies such allegations.

4 4. Roger Sorensen was employed with Frontier as its City Manager for its San
 5 Francisco International Airport location during Plaintiff’s employment with Frontier, and had
 6 supervisory authority over Plaintiff. Defendant denies all remaining allegations in Paragraph 4.

7 5. Defendant denies the allegations in Paragraph 5.

8 6. Defendant denies that Republic was Plaintiff’s employer. Defendant does not
 9 have knowledge or information sufficient to form a belief as to the truth of the remaining
 10 allegations in Paragraph 6, and on that basis denies such allegations.

11 7. Defendant does not have knowledge or information sufficient to form a belief as to
 12 the truth of the allegations in Paragraph 7, and on that basis denies such allegations.

13 8. Defendant does not have knowledge or information sufficient to form a belief as to
 14 the truth of the allegations in Paragraph 8, and on that basis denies such allegations.

15 9. Defendant does not have knowledge or information sufficient to form a belief as to
 16 the truth of the allegations in Paragraph 9, and on that basis denies such allegations.

17 10. Defendant denies the allegations in Paragraph 10.

18 11. Defendant does not have knowledge or information sufficient to form a belief as to
 19 the truth of the allegations in Paragraph 11, and on that basis denies such allegations.

20 12. Defendant admits that it employed Plaintiff as a Customer Service Agent from
 21 May 15, 2006 to September 3, 2010. Defendant denies the remaining allegations in Paragraph
 22 12.

23 13. Defendant admits that it employs over 5,000 employees throughout the country.
 24 Defendant admits that Republic employs over 5,000 employees throughout the country.
 25 Defendant denies the remaining allegations in Paragraph 13.

26 14. Defendant denies that Plaintiff properly requested California Family Rights Act
 27 leave, and denies that Republic was Plaintiff’s employer. Defendant admits the remaining
 28 allegations in Paragraph 14.

1 15. Defendant does not have knowledge or information sufficient to form a belief as to
2 the truth of the allegations in Paragraph 15, and on that basis denies such allegations.

3 16. Defendant denies the allegations in Paragraph 16.

4 17. Defendant does not have knowledge or information sufficient to form a belief as to
5 the truth of the allegations in Paragraph 17, and on that basis denies such allegations.

6 18. Defendant denies the allegations in Paragraph 18.

7 19. Defendant denies the allegations in Paragraph 19.

8 20. Defendant admits that Plaintiff advised Defendant that he was sick in early July
9 2010. Defendant does not have knowledge or information sufficient to form a belief as to the
10 truth of the remaining allegations in Paragraph 20, and on that basis denies such allegations.

11 21. Defendant admits that Plaintiff was off work from July 3, 2010 to July 9, 2010
12 which is reflected in a Kaiser Permanente work status report given to Defendant. Defendant does
13 not have knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations in Paragraph 21, and on that basis denies such allegations.

15 22. Defendant admits that Plaintiff was off work from July 9, 2010 to July 12, 2010
16 which is reflected in a Kaiser Permanente visit verification form dated July 9, 2010 and given to
17 Defendant. Defendant does not have knowledge or information sufficient to form a belief as to
18 the truth of the remaining allegations in Paragraph 22, and on that basis denies such allegations.

19 23. Defendant admits that a Kaiser Permanente visit verification form dated July 12,
20 2010 and given to Defendant places Plaintiff off work from July 1, 2010 to July 19, 2010.
21 Defendant does not have knowledge or information sufficient to form a belief as to the truth of
22 the remaining allegations in Paragraph 23, and on that basis denies such allegations.

23 24. Defendant admits that Plaintiff was off work from July 19, 2010 to July 24, 2010
24 which is reflected in a Kaiser Permanente visit verification form dated July 19, 2010 and given to
25 Defendant, which also reflects a return to work date of July 25, 2010. Defendant does not have
26 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
27 Paragraph 24, and on that basis denies such allegations.

28 25. Defendant denies the allegations in Paragraph 25.

1 26. Defendant denies that Plaintiff's supervisors visited his doctor's office. Defendant
2 does not have knowledge or information sufficient to form a belief as to the truth of the remaining
3 allegations in Paragraph 26, and on that basis denies such allegations.

4 27. Defendant denies the allegations in Paragraph 27.

5 28. Defendant admits that it was given a Kaiser Permanente visit verification form
6 dated July 28, 2010 that states, "Not contagious at this time." Defendant does not have
7 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
8 Paragraph 28, and on that basis denies such allegations.

9 29. Defendant does not have knowledge or information sufficient to form a belief as to
10 the truth of the allegations in Paragraph 29, and on that basis denies such allegations.

11 30. Defendant admits that Plaintiff worked July 25 and 26, 2010. Defendant does not
12 have knowledge or information sufficient to form a belief as to the truth of the remaining
13 allegations in Paragraph 30, and on that basis denies such allegations.

14 31. Defendant denies the allegations in Paragraph 31.

15 32. Defendant denies the allegations in Paragraph 32.

16 33. Defendant admits that Plaintiff went home sick on July 27, 2010. Defendant does
17 not have knowledge or information sufficient to form a belief as to the truth of the remaining
18 allegations in Paragraph 33, and on that basis denies such allegations.

19 34. Defendant does not have knowledge or information sufficient to form a belief as to
20 the truth of the allegations in Paragraph 34, and on that basis denies such allegations.

21 35. Defendant denies it refused to authorize medical treatment for Plaintiff. Defendant
22 does not have knowledge or information sufficient to form a belief as to the truth of the remaining
23 allegations in Paragraph 35, and on that basis denies such allegations.

24 36. Defendant denies it refused to authorize medical treatment for Plaintiff. Defendant
25 admits that a Kaiser Permanente visit verification form dated July 28, 2010, and given to
26 Defendant places Plaintiff off work from June 28, 2010 to August 14, 2010, and reflects a return
27 to work date of August 15, 2010. Defendant does not have knowledge or information sufficient
28 to form a belief as to the truth of the remaining allegations in Paragraph 36, and on that basis

1 denies such allegations.

2 37. Defendant admits that Plaintiff advised it that he was sick and provided a series of
3 doctor's notes that covered the time period of July 1 to August 14, 2010, but these notes simply
4 stated that Plaintiff was ill and unable to attend work and did not set forth sufficient information
5 to clarify that his illness constituted a serious health condition, as defined under the California
6 Family Rights Act. Defendant denies the remaining allegations in Paragraph 37.

7 38. Defendant does not have knowledge or information sufficient to form a belief as to
8 the truth of the allegations in Paragraph 38, and on that basis denies such allegations.

9 39. Defendant admits that on or about early August, 2010, Plaintiff's father telephoned
10 Eric Kartchner to inquire about family medical leave. Defendant does not have knowledge or
11 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 39,
12 and on that basis denies such allegations.

13 40. Defendant denies the allegations in Paragraph 40.

14 41. Defendant admits the allegations in Paragraph 41.

15 42. Defendant admits that filled out CFRA forms for Plaintiff were faxed to Mr.
16 Kartchner at Republic on August 19, 2010. Defendant does not have knowledge or information
17 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 42, and on that
18 basis denies such allegations.

19 43. Defendant admits that Mr. Kartchner telephoned Plaintiff's father on August 19,
20 2010 and advised him that the CFRA forms were deficient in that the medical documentation
21 only supported leave beginning on August 16, 2010. Defendant denies the remaining allegations
22 in Paragraph 43.

23 44. Defendant admits that Plaintiff did not speak with Mr. Sorensen on September 5, 6
24 and 7, 2010, but does not have knowledge or information sufficient to form a belief as to the truth
25 of the allegations that Plaintiff attempted to call Mr. Sorensen on September 5, 6 and 7, 2010, and
26 on that basis denies such allegations. Defendant denies the remaining allegations in Paragraph
27 44.

28 45. Defendant does not have knowledge or information sufficient to form a belief as to

1 the truth of the allegations that Plaintiff was seen by his doctor or received a work status report on
 2 September 8, 2010, and on that basis denies such allegations. Defendant denies the remaining
 3 allegations in Paragraph 45.

4 46. Defendant admits that Mr. Sorensen sent Plaintiff a letter terminating his employment
 5 at Frontier dated September 3, 2010, and given Plaintiff's unprotected leave and resulting
 6 unexcused absences, as well as his failure to adequately communicate with Defendant and
 7 provide the required medical certification of a serious health condition in support of his absences
 8 or leave under CFRA, despite several requests from Defendant to provide such information, it
 9 terminated his employment on September 3, 2010 per its absence policy. Defendant denies the
 10 remaining allegations in Paragraph 46.

11 47. Defendant admits that it provided a final check to Plaintiff for accrued vacation
 12 (\$929.64) and sick pay (\$326.04 and \$104.40) (minus the appropriate tax deductions) in the
 13 amount of \$1,015.82 dated September 2, 2010. Defendant does not have knowledge or
 14 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 47,
 15 and on that basis denies such allegations.

16 48. Defendant does not have knowledge or information sufficient to form a belief as to
 17 the truth of the allegations in Paragraph 48, and on that basis denies such allegations.

18 **FIRST CAUSE OF ACTION**

19 **Retaliation for Engaging In Leave Protected by the California Family Rights Act**

20 **Violation of Cal. Gov. Code § 12945.2**

21 **(Against all defendants)**

22 49. Defendant hereby incorporates its answers to Paragraphs 1 through 48 as if fully
 23 rewritten herein.

24 50. Defendant states that the allegations in Paragraph 50 are legal in nature and call
 25 for a legal conclusion to which no response is required. To and only to the extent that a further
 26 response is deemed required: Defendant admits that the California legislature has enacted the
 27 California Family Rights Act (CFRA), Government Code §§ 12945.2, states that
 28 CFRA/Government Code §§ 12945.2 speaks for itself, and denies Plaintiff's characterization of

1 the same.

2 51. Defendant states that the allegations in Paragraph 51 are legal in nature and call
3 for a legal conclusion to which no response is required. To and only to the extent that a further
4 response is deemed required: Defendant admits that the California legislature has enacted
5 Government Code §§ 12945.2, state that Government Code §§ 12945.2 speaks for itself, and
6 denies Plaintiff's characterization of the same.

7 52. Defendant denies the allegations in Paragraph 52.

8 53. Defendant states that the allegations in Paragraph 53 are legal in nature and call
9 for a legal conclusion to which no response is required. To and only to the extent that a further
10 response is deemed required: Defendant denies Republic was Plaintiff's employer and denies that
11 Defendant or Republic were employers subject to the CFRA at the San Francisco airport location,
12 or within 75 miles of that location. Defendant does not have knowledge or information sufficient
13 to form a belief as to the truth of the allegations in Paragraph 53, and on that basis denies such
14 allegations.

15 54. Defendant denies the allegations in Paragraph 54.

16 55. Defendant denies the allegations in Paragraph 55.

17 56. Defendant admits that Plaintiff's employment with Defendant was terminated for
18 his failure to provide by August 21 or 26, 2010 the required medical certification of a serious
19 health condition in support of his absences or leave under CFRA, despite several requests from
20 Defendant to provide such information. Defendant denies the remaining allegations in Paragraph
21 56.

22 57. Defendant denies the allegations in Paragraph 57.

23 58. Defendant denies the allegations in Paragraph 58.

24 59. Defendant denies the allegations in Paragraph 59.

25 60. Defendant denies the allegations in Paragraph 60.

26 61. Defendant denies the allegations in Paragraph 61.

27 62. Defendant denies the allegations in Paragraph 62.

28 ///

SECOND CAUSE OF ACTION

**Interference with/Denial of California Family Rights Act Leave Cal. Gov. Code § 12900
(Against Defendants Frontier, Republic Airways and Does 1-20)**

63. Defendant hereby incorporates its answers to Paragraphs 1 through 62 as if fully rewritten herein.

64. Defendant states that the allegations in Paragraph 64 are legal in nature and call for a legal conclusion to which no response is required. To and only to the extent that a further response is deemed required: Defendant admits that the California legislature has enacted the California Family Rights Act (CFRA), Government Code §§ 12945.2, states that CFRA/Government Code §§ 12945.2 speaks for itself, and denies Plaintiff's characterization of the same.

65. Defendant states that the allegations in Paragraph 65 are legal in nature and call for a legal conclusion to which no response is required. To and only to the extent that a further response is deemed required: Defendant admits that the California legislature has enacted Government Code §§ 12945.2, state that Government Code §§ 12945.2 speaks for itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining allegations in Paragraph 65.

66. Defendant denies the allegations in Paragraph 66.

67. Defendant denies the allegations in Paragraph 67.

68. Defendant denies the allegations in Paragraph 68.

69. Defendant denies the allegations in Paragraph 69.

THIRD CAUSE OF ACTION

**Disability Discrimination in Violation of California Fair Employment and Housing Act;
Govt. Code § 12940(a)**

(Against Defendants Frontier, Republic Airways and Does 1-20)

70. Defendant hereby incorporates its answers to Paragraphs 1 through 69 as if fully rewritten herein.

///

1 71. Defendant states that the allegations in Paragraph 71 are legal in nature and call
2 for a legal conclusion to which no response is required. To and only to the extent that a further
3 response is deemed required: Defendant admits that the California legislature has enacted
4 Government Code §§ 12926, *et seq.*, state that Government Code §§ 12926, *et seq.* speaks for
5 itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining
6 allegations in Paragraph 71.

7 72. Defendant states that the allegations in Paragraph 72 are legal in nature and call
8 for a legal conclusion to which no response is required. To and only to the extent that a further
9 response is deemed required: Defendant admits that the California legislature has enacted
10 Government Code §§ 12940, *et seq.*, state that Government Code §§ 12940, *et seq.* speaks for
11 itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining
12 allegations in Paragraph 72.

13 73. Defendant states that the allegations in Paragraph 73 are legal in nature and call
14 for a legal conclusion to which no response is required. To and only to the extent that a further
15 response is deemed required: Defendant admits that the California legislature has enacted
16 Government Code §§ 12926, *et seq.*, state that Government Code §§ 12926, *et seq.* speaks for
17 itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining
18 allegations in Paragraph 73.

19 74. Defendant denies the allegations in Paragraph 74.

20 75. Defendant does not have knowledge or information sufficient to form a belief as to
21 the truth of the allegations in Paragraph 75, and on that basis denies such allegations.

22 76. Defendant denies the allegations in Paragraph 76.

23 77. Defendant denies the allegations in Paragraph 77.

24 78. Defendant denies the allegations in Paragraph 78.

25 79. Defendant denies the allegations in Paragraph 79.

26 ///

27 ///

28 ///

FOURTH CAUSE OF ACTION

Failure to Provide Reasonable Accommodations In Violation of FEHA § 12940(m)

(Against Defendants Frontier, Republic Airways and Does 1-20)

80. Defendant hereby incorporates its answers to Paragraphs 1 through 79 as if fully rewritten herein.

81. Defendant states that the allegations in Paragraph 81 are legal in nature and call for a legal conclusion to which no response is required. To and only to the extent that a further response is deemed required: Defendant admits that the California legislature has enacted Government Code §§ 12940, *et seq.*, state that Government Code §§ 12940, *et seq.* speaks for itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining allegations in Paragraph 81.

82. Defendant denies the allegations in Paragraph 82.

83. Defendant denies the allegations in Paragraph 83.

84. Defendant denies the allegations in Paragraph 84.

85. Defendant denies the allegations in Paragraph 85.

86. Defendant denies the allegations in Paragraph 86.

87. Defendant denies the allegations in Paragraph 87.

FIFTH CAUSE OF ACTION

Failure to Engage in Interactive Process In Violation of FEHA § 12940(n)

(Against Defendants Frontier, Republic Airways and Does 1-20)

88. Defendant hereby incorporates its answers to Paragraphs 1 through 87 as if fully rewritten herein.

89. Defendant states that the allegations in Paragraph 89 are legal in nature and call for a legal conclusion to which no response is required. To and only to the extent that a further response is deemed required: Defendant admits that the California legislature has enacted Government Code §§ 12940, *et seq.*, state that Government Code §§ 12940, *et seq.* speaks for itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining allegations in Paragraph 89.

1 90. Defendant denies the allegations in Paragraph 90.

2 91. Defendant denies the allegations in Paragraph 91.

3 92. Defendant denies the allegations in Paragraph 92.

4 93. Defendant denies the allegations in Paragraph 93.

5 94. Defendant denies the allegations in Paragraph 94.

6 **SIXTH CAUSE OF ACTION**

7 **Hostile Work Environment, Harassment based on Age in Violation of Govt Code § 12940(j)**

8 **(Against All Defendants)**

9 95. Defendant hereby incorporates its answers to Paragraphs 1 through 95 as if fully
10 rewritten herein.

11 96. Defendant denies the allegations in Paragraph 96.

12 97. Defendant denies the allegations in Paragraph 97.

13 98. Defendant denies the allegations in Paragraph 98.

14 99. Defendant denies the allegations in Paragraph 99.

15 100. Defendant denies the allegations in Paragraph 100.

16 101. Defendant denies the allegations in Paragraph 101.

17 102. Defendant denies the allegations in Paragraph 102.

18 103. Defendant denies the allegations in Paragraph 103.

19 **SEVENTH CAUSE OF ACTION**

20 **Failure to Take Appropriate Corrective Action in Violation of the FEHA Cal. Gov. Code §**

21 **12900 et. Seq.**

22 **(Against Defendants Frontier, Republic Airways and Does 1-20)**

23 104. Defendant hereby incorporates its answers to Paragraphs 1 through 103 as if fully
24 rewritten herein.

25 105. Defendant states that the allegations in Paragraph 105 are legal in nature and call
26 for a legal conclusion to which no response is required. To and only to the extent that a further
27 response is deemed required: Defendant admits that the California legislature has enacted
28 Government Code §§ 12926, *et seq.*, state that Government Code §§ 12926, *et seq.* speaks for

1 itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining
2 allegations in Paragraph 105.

3 106. Defendant states that the allegations in Paragraph 106 are legal in nature and call
4 for a legal conclusion to which no response is required. To and only to the extent that a further
5 response is deemed required: Defendant admits that the California legislature has enacted
6 Government Code §§ 12940, *et seq.*, state that Government Code §§ 12940, *et seq.* speaks for
7 itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining
8 allegations in Paragraph 106.

9 107. Defendant states that the allegations in Paragraph 107 are legal in nature and call
10 for a legal conclusion to which no response is required. To and only to the extent that a further
11 response is deemed required: Defendant admits that the California legislature has enacted
12 Government Code §§ 12926, *et seq.*, state that Government Code §§ 12926, *et seq.* speaks for
13 itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining
14 allegations in Paragraph 107.

15 108. Defendant denies the allegations in Paragraph 108.

16 109. Defendant does not have knowledge or information sufficient to form a belief as to
17 the truth of the allegations in Paragraph 109, and on that basis denies such allegations.

18 110. Defendant denies the allegations in Paragraph 110.

19 111. Defendant denies the allegations in Paragraph 111.

20 112. Defendant denies the allegations in Paragraph 112.

21 113. Defendant denies the allegations in Paragraph 113.

22 114. Defendant denies the allegations in Paragraph 114.

23 **EIGHTH CAUSE OF ACTION**

24 **Wrongful Termination in Violation of Public Policy**

25 **(Against Defendants Frontier, Republic Airways and Does 1-20)**

26 115. Defendant hereby incorporates its answers to Paragraphs 1 through 114 as if fully
27 rewritten herein.

28 ///

116. Defendant states that the allegations in Paragraph 116 are legal in nature and call for a legal conclusion to which no response is required. To and only to the extent that a further response is deemed required: Defendant admits that the California legislature has enacted the Fair Employment and Housing Act (FEHA), state that FEHA speaks for itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining allegations in Paragraph 116.

117. Defendant states that the allegations in Paragraph 117 are legal in nature and call for a legal conclusion to which no response is required. To and only to the extent that a further response is deemed required: Defendant admits that the California legislature has enacted CFRA, state that CFRA speaks for itself, and denies Plaintiff's characterization of the same. Defendant denies the remaining allegations in Paragraph 117.

118. Defendant denies the allegations in Paragraph 118.

119. Defendant denies the allegations in Paragraph 119.

120. Defendant denies the allegations in Paragraph 120.

121. Defendant denies the allegations in Paragraph 121.

122. Defendant denies the allegations in Paragraph 122.

123. Defendant denies the allegations in Paragraph 123.

124. Defendant denies the allegations in Paragraph 124.

PRAYER FOR RELIEF

Defendant denies the allegations in the prayer for relief, and Paragraphs 1 through 5 of the prayer for relief.

AFFIRMATIVE DEFENSES

Further responding to the Complaint, Defendant asserts the following affirmative defenses:

First Affirmative Defense

Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

Second Affirmative Defense

All or part of Plaintiff's claims are potentially barred by the doctrine of avoidable

1 consequences, in that Defendant at all times had published and enforced policies in place, and
 2 otherwise exercised reasonable care, to prevent and promptly correct unlawful treatment on the
 3 basis of any protected characteristic, and Plaintiff unreasonably failed to avail himself of the
 4 preventive or corrective opportunities provided by Defendant.

5 **Third Affirmative Defense**

6 All or part of Plaintiff's claims are barred to the extent that they are not within the scope
 7 of Plaintiff's charge of discrimination filed with the California Department of Fair Employment
 8 and Housing, and to the extent that Plaintiff otherwise failed to exhaust all required statutory,
 9 administrative and/or judicial remedies.

10 **Fourth Affirmative Defense**

11 Although Defendant denies liability, Plaintiff's Complaint is barred, in whole or in part,
 12 because Defendant is informed and believes, and thereon alleges, that Plaintiff was unable to
 13 perform the essential functions of his position, even with reasonable accommodation.

14 **Fifth Affirmative Defense**

15 Although Defendant denies liability, that Plaintiff's Complaint is barred, in whole or in
 16 part, because Defendant is informed and believes, and thereon alleges, that any requested
 17 accommodation would have posed an undue hardship on Defendant.

18 **Sixth Affirmative Defense**

19 Plaintiff's Complaint is barred, in whole or in part, because the loss or harm sustained by
 20 Plaintiff, if any, resulted from Plaintiff's own acts or omissions and was not due to any act or
 21 omission of Defendant.

22 **Seventh Affirmative Defense**

23 All or part of Plaintiff's claims are potentially barred by the applicable statutes of
 24 limitations, including but not limited to California Government Code §§12960 and 12965, and
 25 California Code of Civil Procedure §§335.1, 337, 338, 339 and/or 343.

26 **Eighth Affirmative Defense**

27 All or part of Plaintiff's claims are potentially barred by the doctrine of estoppel.

28 ///

Ninth Affirmative Defense

All or part of Plaintiff's claims are potentially barred by the doctrine of waiver.

Tenth Affirmative Defense

In all employment actions taken with respect to Plaintiff, Defendant had and acted on legitimate, lawful reasons for such actions, and at all times acted in good faith compliance with applicable law.

Eleventh Affirmative Defense

Plaintiff's punitive damages demand is barred because there is no evidence that a managing agent acted with fraud, oppression or malice.

Twelfth Affirmative Defense

Plaintiff's punitive damages demand is barred to the extent that the amount sought may violate substantive and procedural safeguards guaranteed to Defendant by the due process clauses of the United States and California Constitutions. Plaintiff's punitive damages demand is further barred to the extent that the imposition of such damages is not rationally related to, or is grossly excessive in relation to, legitimate state interests.

Thirteenth Affirmative Defense

Plaintiff's claims for alleged damages are barred to the extent that Plaintiff failed to mitigate such alleged damages.

Fourteenth Affirmative Defense

Defendant presently has insufficient knowledge or information upon which to form a belief as to whether they have additional, yet unknown, affirmative defenses. Defendant reserves the right to assert additional affirmative defenses that become known or available after further litigation in this action.

WHEREFORE, Defendant requests that the Court dismiss Plaintiff's Complaint in its entirety with prejudice, enter judgment for Defendant and against Plaintiff, and grant such other and further relief as the Court deems just and proper, including an award of attorneys' fees and costs to Defendant.

///

1 Dated: March 18, 2013

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

2
3 By: /s/ Martina M. Nagle
MICHAEL C. SULLIVAN
4 MARTINA M. NAGLE
Attorneys for Defendants
5 Frontier Airlines, Inc., Republic Airways
Holdings, Inc., Roger Sorenson
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 *Ordonez v. Frontier Airlines*

2 USDC – Northern District Case No. C 13-00940 MEJ

3 **PROOF OF SERVICE**

4 I, the undersigned, hereby declare that I am over the age of eighteen years and not a party
5 to this action. I am employed, or am a resident of, the County of San Diego, California, and my
6 business address is: Paul, Plevin, Sullivan & Connaughton LLP, 101 West Broadway, Ninth
7 Floor, San Diego, California 92101-8285.

8 On March 18, 2013, I caused to be served the following document(s):

9 **DEFENDANT FRONTIER AIRLINES, INC.'S ANSWER AND AFFIRMATIVE
10 DEFENSES TO PLAINTIFF'S COMPLAINT**

11 on the interested party (ies) in this action by placing a true copy thereof and addressed as follows:

12 Kenneth C. Absalom
13 Law Office of Kenneth C. Absalom
14 275 Battery Street, Suite 200
15 San Francisco, CA 94111
16 Telephone: (415) 392-5040
17 Facsimile: (415) 392-3729
18 kenabsalom@333law.com

19 ☒ (By **E-MAIL OR ELECTRONIC TRANSMISSION**) Based on a court order or an
20 agreement of the parties to accept service by e-mail or electronic transmission, I caused
21 the documents to be sent to the person(s) at the e-mail addresses listed above. I did not
22 receive, within a reasonable time after the transmission, any electronic message or other
23 indication that the transmission was unsuccessful.

24 ☒ (Federal) I declare that I am employed by the office of a member of the bar of this court at
25 whose direction the service was made.

26 Executed March 18, 2013, at San Diego, California.

27 
28 Julie M.W. Szotek